

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 391

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

AN ACT

RELATING TO GAME AND FISH; AMENDING A SECTION OF CHAPTER 17,  
ARTICLE 2 NMSA 1978 TO PROVIDE FOR LANDOWNER TAKINGS OF COVERED  
SPECIES OR PREDATORS THAT THREATEN HUMAN LIFE OR PROPERTY;  
PROVIDING FOR ASSISTANCE, INTERVENTION, CLAIMS AND PAYMENTS;  
INCREASING FEES FOR BIG GAME DEPREDATION DAMAGE STAMPS; MAKING  
AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 17-2-7.2 NMSA 1978 (being Laws 1997,  
Chapter 224, Section 3) is amended to read:

"17-2-7.2. LANDOWNER TAKING--CONDITIONS--DEPARTMENT  
RESPONSIBILITIES.--

~~[A. A landowner or lessee, or employee of either,  
may take or kill an animal on private land, in which they have  
an ownership or leasehold interest, including game animals and~~

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1 ~~other quadrupeds, game birds and fowl, that presents an~~  
2 ~~immediate threat to human life or an immediate threat of damage~~  
3 ~~to property, including crops; provided, however, that the~~  
4 ~~taking or killing is reported to the department of game and~~  
5 ~~fish within twenty-four hours and before the removal of the~~  
6 ~~carcass of the animal killed, in accordance with regulations~~  
7 ~~adopted by the commission.~~

8 ~~B. A landowner or lessee, or employee of either,~~  
9 ~~may take or kill animals on private land, in which they have an~~  
10 ~~ownership or leasehold interest, including game animals and~~  
11 ~~other quadrupeds, game birds and fowl, that present a threat to~~  
12 ~~human life or damage to property, including crops, according to~~  
13 ~~regulations adopted by the commission. The regulations shall:~~

14 ~~(1) provide a method for filing a complaint to~~  
15 ~~the department by the landowner or lessee, or employee of~~  
16 ~~either of them, of the existence of a depredation problem;~~

17 ~~(2) provide for various departmental~~  
18 ~~interventions, depending upon the type of animal and~~  
19 ~~depredation;~~

20 ~~(3) require the department to offer at least~~  
21 ~~three different interventions, if practical;~~

22 ~~(4) require the department to respond to the~~  
23 ~~initial and any subsequent complaints within ten days with an~~  
24 ~~intervention response to the complaint and to carry out the~~  
25 ~~intervention, if agreed upon between the department and the~~

1 ~~landowner, within five days of that agreement;~~

2 ~~(5) permit the landowner or lessee to reject~~  
3 ~~for good cause the interventions offered by the department;~~

4 ~~(6) require a landowner or lessee to~~  
5 ~~demonstrate that the property depredation is greater in value~~  
6 ~~than the value of any wildlife-related income or fee collected~~  
7 ~~by the landowner or lessee for permission to take or kill an~~  
8 ~~animal of the same species on the private property or portion~~  
9 ~~of the private property identified in the complaint as the~~  
10 ~~location where the depredation occurred; and~~

11 ~~(7) permit the landowner, lessee or employee,~~  
12 ~~when interventions by the department have not been successful~~  
13 ~~and after one year from the date of the filing of the initial~~  
14 ~~complaint, to kill or take an animal believed responsible for~~  
15 ~~property depredation.~~

16 ~~G. For purposes of this section:~~

17 ~~(1) "commission" means the state game~~  
18 ~~commission;~~

19 ~~(2) "department" means the department of game~~  
20 ~~and fish; and~~

21 ~~(3) "intervention" means a solution proposed~~  
22 ~~by the department to eliminate the depredation.]~~

23 A. A landowner or lessee, or an employee or agent  
24 of either, or any other person may take or kill a predator that  
25 presents an immediate threat to human life, livestock or family

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1 pets; provided that the taking or killing is reported to the  
2 department within twenty-four hours. The department shall  
3 determine disposition of the carcass. Nothing in this  
4 subsection authorizes a taking in violation of the Wildlife  
5 Conservation Act.

6 B. The department shall provide assistance to a  
7 landowner, lessee or employee of either who requests assistance  
8 in remedying or preventing reasonably anticipated damage to  
9 property or physical harm to humans, livestock or family pets  
10 caused by a covered species or predator. The request shall be  
11 made in writing or to a toll-free telephone number to be  
12 provided by the department and within seventy-two hours of  
13 discovering facts requiring assistance. Within twenty-four  
14 hours of receipt of a request for assistance, the department  
15 shall consult with the complainant and make arrangements to  
16 conduct an on-site investigation of the complaint. As soon as  
17 reasonably possible, no later than fourteen days following the  
18 investigation, the department shall offer its assistance and  
19 reasonably available interventions that may include forage  
20 leases, harassment, temporary fencing, population management  
21 hunts or other appropriate interventions. The complainant  
22 shall accept the department's assistance and implement or  
23 permit the department to implement suggested interventions as a  
24 condition to receiving damage compensation under a future claim  
25 for damages to property caused by the covered species or

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1 predator designated in the request for assistance. Refusal of  
 2 assistance or interventions shall not preclude future claims  
 3 for damage and payment for those claims if the claimant  
 4 provides the department with written good cause for refusal to  
 5 accept assistance or interventions. As an intervention, and as  
 6 appropriate to on-the-ground circumstance, the department may  
 7 supply materials or other goods or services to the claimant.

8 C. Pursuant to Subsection B of this section, if a  
 9 landowner or lessee has suffered damage to property from a  
 10 covered species or predator, the landowner or lessee, within  
 11 ten days of notifying the department that assistance or  
 12 intervention is not working or of refusing to accept assistance  
 13 or intervention, may file a written claim. Unless provided by  
 14 rule, claims for growing cultivated crops may not be made until  
 15 the time of harvest. Claims shall be made on a form provided  
 16 by the department, verified under penalty of perjury, that  
 17 shall include:

- 18 (1) the date the damage occurred or was  
 19 discovered;  
 20 (2) the number and type of species causing the  
 21 damage;  
 22 (3) the type of damage claimed;  
 23 (4) the date of initial request for assistance  
 24 from the department;  
 25 (5) the fair market value of the damage; and

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1                   (6) the location of the damage.

2                   D. The claimant shall provide evidence that the  
3 damages for which the claim is submitted are not covered under  
4 an insurance policy and that the claimant does not anticipate  
5 receiving insurance compensation for damages claimed. The  
6 claim shall also contain a statement that damage prevention  
7 materials supplied by the department, if any, were used in an  
8 effort to prevent or reduce the extent of the damage and were  
9 not used for any other purpose. The landowner or lessee must  
10 advise the department on an ongoing basis of continuing damage  
11 and whether the department-provided interventions are not  
12 effective.

13                   E. Damages shall not be awarded to a landowner or  
14 lessee who, during the period of five years preceding the  
15 claimed damage, has received state or federal funds for use in  
16 the improvement or management of the real property, other than  
17 water development or distribution enhancements for multiple  
18 species benefit, on which the damaged property is located  
19 solely for enhancement of the real property as habitat for the  
20 damaging species of wildlife.

21                   F. The department shall make a decision on a claim  
22 within thirty days of receipt of the claim. If the claim is  
23 accepted, the department shall deliver to the landowner or  
24 lessee a written acceptance of the claim and shall initiate  
25 payment of the claim concurrently with the written acceptance

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1 from money appropriated for that purpose in the big game  
2 depredation damage fund. If the value of approved claims  
3 exceeds the amount appropriated from the big game depredation  
4 damage fund, the department shall request from the state board  
5 of finance a grant sufficient to pay any outstanding claims for  
6 the balance of the fiscal year. Such payments will be subject  
7 to approval by the state board of finance. Acceptance of that  
8 payment by the landowner or the lessee shall release the  
9 department, the commission and the state from any further  
10 liability for the claimed loss. Payments pursuant to this  
11 section shall be reduced by an amount equal to ten percent of  
12 the total payable damages.

13 G. If the department does not accept the claim by  
14 disagreeing with either or both the claimed cause or the amount  
15 of the estimated damages, the claim shall be forwarded within  
16 ten days of the department's refusal for determination to a  
17 committee composed of the county extension agent of the  
18 agricultural extension service for the county in which the  
19 damage or a majority of the damage occurred; the county  
20 assessor for the county in which the damage or a majority of  
21 the damage occurred; one public member who is familiar with the  
22 kind of damage involved appointed by the board of county  
23 commissioners for the county in which the damage or a majority  
24 of the damage occurred; and an appropriate and qualified claims  
25 adjustment service provider contracted by the department from

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1 the farm service agency of the United States department of  
2 agriculture, the federal land bank, the production credit  
3 association or an equally qualified entity. The determination  
4 by that committee shall be final and binding on both the  
5 claimant and the department. No member of the committee shall  
6 be entitled to compensation for serving on the committee, but  
7 may be reimbursed by the department in accordance with the  
8 provisions of the Per Diem and Mileage Act. The costs of  
9 services provided by the private claims adjustment service  
10 provider contracted by the department shall be borne equally by  
11 the department and the claimant unless the damages established  
12 equal or exceed those estimated by the claimant in its claim,  
13 in which event the costs shall be the sole obligation of the  
14 department. The landowner or lessee shall have the burden of  
15 providing to the committee sufficient credible evidence to  
16 substantiate the cause and extent of the damage claimed.  
17 Payment to the landowner or lessee of a claim shall be made  
18 pursuant to this section.

19 H. No claim shall be made under this section for  
20 damages occurring more than three months prior to the effective  
21 date of this section or more than three months after the  
22 occurrence of the damage or time of harvest for growing  
23 cultivated crops.

24 I. Neither the department nor any other  
25 instrumentality of the state shall be obligated to compensate

1 for depredation damages in any cumulative amount exceeding the  
2 funds available and appropriated for such payments and the  
3 costs of providing interventions annually available in the big  
4 game depredation damage fund pursuant to the provisions of  
5 Subsection F of this section.

6 J. As an intervention, the department may enter  
7 into leases of forage with requestors for the reasonable value  
8 of growing and harvested crops consumed by covered species. A  
9 forage lease payment shall be reduced by the amount of  
10 insurance proceeds received by the claimant for loss or damage  
11 to growing or harvested crops, which loss occurred during the  
12 forage lease term. Leases shall not be entered into if the  
13 landowner or lessee has received state or federal habitat  
14 improvement funds solely intended to benefit wildlife pursuant  
15 to this section. The terms of a forage lease shall include an  
16 obligation by the lessee to continue agricultural activity on  
17 the leased land at least equivalent to the activities and  
18 husbandry prior to the date of the lease.

19 K. The commission shall establish rules to  
20 implement the provisions of this section.

21 L. As used in this section:

22 (1) "commission" means the state game  
23 commission;

24 (2) "claimant" means a landowner or lessee who  
25 files a claim with the department for damages arising out of

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1 wildlife depredation;

2 (3) "covered species" means elk, deer,  
3 antelope, cranes and geese;

4 (4) "damage" means actual damage to land,  
5 growing cultivated crops, harvested and stored crops, seed  
6 crops, fences, irrigation and water supply systems or physical  
7 trauma inflicted by a predator resulting in incapacitating  
8 injury or death to livestock and sworn to by the claimant with  
9 evidence collected within such time of the occurrence to  
10 clearly substantiate the cause of injury or death;

11 (5) "department" means the department of game  
12 and fish;

13 (6) "good cause" means that either the  
14 landowner or lessee can document to the satisfaction of the  
15 department that:

16 (a) the intervention offered would cause  
17 physical damage to persons or property; or

18 (b) the intervention offered will not  
19 result in a substantial lessening of the depredation it is  
20 intended to affect. In either instance the claim of good cause  
21 shall be made in good faith and supported with facts reasonably  
22 sufficient to meet either or both of the above criteria;

23 (7) "immediate" means an emergency situation  
24 where imminent harm to human life, livestock or family pets is  
25 perceived to exist;

1                   (8) "landowner" means an individual or entity  
2 that holds a verifiable fee interest or interest under a land  
3 sale contract in real property in New Mexico;

4                   (9) "lessee" means an individual or entity  
5 that is in possession of private land under the terms of a  
6 lease, occupancy agreement or other documentation between the  
7 lessee and the owner of the land;

8                   (10) "livestock" means livestock as defined in  
9 Section 77-2-1.1 NMSA 1978;

10                   (11) "predator" means bears, cougars or  
11 bobcats;

12                   (12) "property" means:

13                               (a) private or leased state or public  
14 land on which cultivated crops are growing;

15                               (b) harvested and stored crops;

16                               (c) seed crops;

17                               (d) livestock;

18                               (e) fences; and

19                               (f) irrigation and water supply systems;

20 and

21                   (13) "requestor" means a landowner, lessee or  
22 the employee or agent of either, who requests the department to  
23 provide technical advise or interventions to resolve a  
24 depredation problem."

25                   Section 2. Section 17-3-13.3 NMSA 1978 (being Laws 2001,

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underscored material = new  
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1 Chapter 213, Section 1) is amended to read:

2 "17-3-13.3. BIG GAME DEPREDATION DAMAGE STAMP REQUIRED--  
3 DISPOSITION OF RECEIPTS.--

4 A. Each license to hunt big game shall include a  
5 big game depredation damage stamp. The [~~department of~~] state  
6 game [~~and fish~~] commission shall, by rule, set the fee for the  
7 stamp; provided that the fee shall not exceed [~~five dollars~~  
8 ~~(\$5.00)] six dollars (\$6.00) for each resident license or [~~ten~~  
9 ~~dollars (\$10.00)] twenty dollars (\$20.00) for each nonresident  
10 license.~~~~

11 B. No license to hunt big game shall be considered  
12 to be a proper and valid license unless it indicates, by a  
13 stamp, check off or other official mark, that the fee for the  
14 big game depredation damage stamp has been paid.

15 C. Revenues received by the department of game and  
16 fish from the sale of big game depredation damage stamps shall  
17 be deposited to the credit of the big game depredation damage  
18 fund."

19 Section 3. EFFECTIVE DATES.--

20 A. The effective date of the provisions of Section  
21 1 of this act is July 1, 2010.

22 B. The effective date of the provisions of Section  
23 2 of this act is April 1, 2010.